IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

Bail Appl..No. 6421 of 2007()

(CR.NO.32/03 OF KASARAGOD EXCISE RANGE)

PETITIONER/ACCUSED:

PURUSHOTHAMAN, AGED 38/07,
S/O.APPU VAIDYAR, ANABAGILU, KASABA VILLAGE,
KASARAGOD.

BY ADV. SRI.T.B.SHAJIMON

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REP. BY INSPECTOR
OF POLICE, KASARAGOD EXCISE RANGE,
REP. BY THE PUBLIC PROSECUTOR, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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B.A.No. 6421 of 2007

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Dated this the 23rd day of October, 2007

ORDER

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. 447 packets of arrack, each containing 100ml, were allegedly recovered from an auto rickshaw which the petitioner was driving on 6.8.03. The petitioner took to his heels and could not be arrested. The investigation is still in progress. Final report has not been filed. The petitioner has not been arrested. The learned Public Prosecutor submits that the petitioner is involved in one other crime also under the Kerala Abkari Act.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that the petitioner may be granted anticipatory bail.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there are no circumstances justifying the invocation of extraordinary equitable discretion under Section 438 Cr.P.C. The allegations and the materials collected clearly show the complicity of the petitioner. The petitioner can surrender before the learned Magistrate and seek regular bail in the ordinary and normal course.

4. I find merit in the opposition by the learned Public Prosecutor. Having considered all the relevant inputs, I find no features which can justify the invocation of extraordinary equitable discretion under Section 438 Cr.P.C in this case. I am satisfied that this is a fit case where the petitioner must resort to the ordinary and normal course of appearing before the learned Magistrate having jurisdiction. He must then seek regular bail in the normal and ordinary course.

5. In the result, this petition is dismissed. Needless to say, if the petitioner appears before the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE